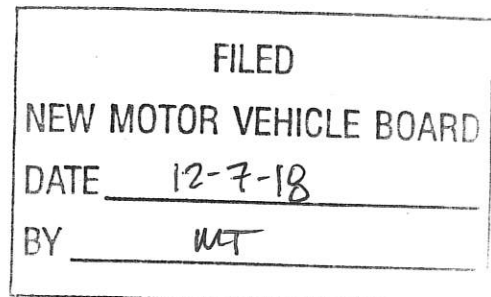


VIA E-MAIL



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Attorneys for Protestant
MAVERICK AUTO GROUP 2, LLC,
a California Limited Liability Company



STATE OF CALIFORNIA
NEW MOTOR VEHICLE BOARD

MAVERICK AUTO GROUP 2, LLC, a
California Limited Liability Company,

Protestant,

vs.

VOLKSWAGEN GROUP OF AMERICA,
INC., a New Jersey Corporation,

Respondent

Protest No.: PR-2581-18

PROTEST

[Vehicle Code §3060]

(PREHEARING CONFERENCE
AND HEARING REQUESTED)

PROTEST PURSUANT TO VEHICLE CODE SECTION 3060

Protestant MAVERICK AUTO GROUP 2, LLC, dba Volkswagen of Fairfield, a
California Limited Liability Company ("VW Fairfield," "Dealer," or "Protestant"), through its
attorneys, hereby files this Protest pursuant to Vehicle Code section 3060 and alleges as follows:

1. VW Fairfield is a duly licensed California new motor vehicle dealer doing business
at 2855 Auto Mall Parkway, Fairfield, CA, 94533, and its telephone number is (707) 402-7100.
2. VW Fairfield is represented in this matter by Halbert B. Rasmussen of Scali
Rasmussen whose address is 800 Wilshire Boulevard, Suite 400, Los Angeles, CA, 90017 and
telephone number is (213) 239-5622.

1 3. Respondent VOLKSWAGEN GROUP OF AMERICA, INC., a New Jersey
2 Corporation ("VWA") is a licensed vehicle manufacturer / distributor whose principal office is
3 located in the State of Virginia. VWA's California mailing address is 21700 Oxnard Street, Suite
4 1900, Woodland Hills, CA, 91367, and its telephone number is (818) 532-0347. The notice to
5 which this protest relates was signed by Sal Mazzara, Senior Manager, Network Development, at
6 the address set forth above.

7 4. VW Fairfield is a "franchisee" as defined under Vehicle Code section 331.1 and
8 VWA is a "franchisor" as defined under Vehicle Code section 331.2.

9 5. VW Fairfield sells new motor vehicles and associated parts, accessories, and
10 service pursuant to a written agreement and "franchise," as defined in Vehicle Code section 331,
11 entered into by and between VW Fairfield and VWA, all of which being subject to the jurisdiction
12 of the New Motor Vehicle Board (hereinafter the "Board").

13 6. On or about November 30, 2018, VW Fairfield received a letter from VWA dated
14 November 29, 2018, (the "Notice") purporting to give VW Fairfield 15-day notice of termination
15 of VW Fairfield's franchise as a VWA dealer. The Notice failed to comply with the requirements
16 of law and the franchise for giving notices of termination.

17 7. At no time has VW Fairfield agreed to, or acquiesced in, or otherwise indicated any
18 approval whatsoever for the purported termination of the franchise.

19 8. VW Fairfield denies that the reasons for termination set forth in the Notice are true
20 and generally denies each and every allegation contained in the Notice. VW Fairfield avers that
21 the reasons for termination set forth in the Notice are misleading.

22 9. VW Fairfield denies that any of the reasons for termination set forth in the Notice
23 (whether true or not) constitute valid contractual grounds for termination under the franchise
24 agreement.

25 10. VW Fairfield furthermore denies that good cause exists under the existing
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1 circumstances for terminating VW Fairfield's franchise. By way of example, and among other
2 legal and factual contentions, the following reflect the lack of such good cause:

3 (a) VW Fairfield has transacted and is transacting an adequate amount of
4 business compared to the business available to it;

5 (b) VW Fairfield has made a substantial and permanent investment in the
6 dealership, which will be damaged if VWA's purported termination of VW
7 Fairfield's franchise is allowed;

8 (c) It would be injurious to the public welfare for VW Fairfield's franchise to
9 be terminated by VWA;

10 (d) VW Fairfield has adequate motor vehicle sales and service facilities,
11 equipment, vehicle parts, and qualified service personnel to reasonably provide for
12 the needs of buyers and owners of VWA's same-make products in the market area
13 and is rendering adequate service to the public;

14 (e) The extent of VW Fairfield's noncompliance, if any, with the terms of the
15 franchise agreement is legally privileged by virtue of provisions of the Vehicle
16 Code and other applicable law and/or excused and, in any event, lacks sufficient
17 materiality to warrant termination.

18 (f) VW Fairfield is informed and believes and thereon alleges that the
19 purported termination runs contrary to numerous and substantial legal, equitable,
20 and contractual obligations of VWA and rights of VW Fairfield including but not
21 limited to those set forth in Vehicle Code, sections 3060, 11713.2, 11713.3, and
22 11713.13, including, but not limited to the following: VWA's breach of the
23 exclusivity provisions of the franchise and applicable law by directly and unfairly
24 competing with VW Fairfield; VWA's failure and refusal to recognize and treat
25 VW Fairfield as a dealer generally and as a dealer able to represent certain models
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1 within the line-make and its notification to VW Fairfield's customers for VWA that
2 VW Fairfield is no longer a dealer; and by VWA conducting its vehicle sales and
3 other competitive activities in California in contravention of applicable law,
4 including required dealer licensure under the Vehicle Code.

5 11. Any contention of VWA that VW Fairfield failed to cure purported breaches on its
6 part or had agreed to termination under certain circumstances is incomplete, inaccurate,
7 insufficient to constitute good cause to terminate, contrary to applicable law, and subject to VW
8 Fairfield's averments set forth above.

9
10 12. VW Fairfield and its attorneys desire to appear before the Board and to have a
11 hearing on this Protest, it being estimated that the time required for hearing will be approximately
12 ten days.

13 13. VW Fairfield requests a prehearing conference.

14 **PRAYER**

15
16 WHEREFORE, VW Fairfield prays for relief as follows:

17 1. That the Board order VWA to refrain from terminating the franchise of VW
18 Fairfield, and from taking any acts that treat VW Fairfield as terminated or otherwise not a VWA
19 dealer, including an order prohibiting VWA from competing with VW Fairfield as a dealer and
20 from making public statements in derogation of VW Fairfield's status as a VWA dealer, unless
21 and until the Board overrules this Protest.

22
23 2. That the Board hold a hearing and based on the evidence and proof produced therein
24 determine that good cause does not exist for the termination of VW Fairfield's franchise and
25 thereby sustain this Protest; or if the Board does not enter such an order, that the Board
26 conditionally sustain this Protest on such terms as comport with the Board's authority under
27 Vehicle Code section 3067; or, if the Board does not enter the orders aforesaid, that any order
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1 overruling this Protest be conditioned in such a manner as shall preserve VW Fairfield's rights
2 under applicable law, including but not limited to Vehicle Code sections 11713.2, 11713.3 and
3 11713.13.

4 3. For such other rulings and relief as the Board deems just and equitable.
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6

7 DATED: December 7, 2018.

SCALI RASMUSSEN

8
9 By: 

10 CHRISTIAN SCALI, ESQ.

11 HALBERT RASMUSSEN, ESQ.

12 Attorneys for Protestant,

13 MAVERICK AUTO GROUP 2, LLC
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1 **PROOF OF SERVICE**

2 I am a citizen of the United States. My business address is The Scali Law Firm, 800
3 Wilshire Boulevard, Suite 400, Los Angeles, California 90017. I am employed in the County of
4 Los Angeles where this service occurs. I am over the age of 18 years, and not a party to the
5 within action.

6 On the date below, according to ordinary business practice, I served the foregoing
7 documents described as:

8 **PROTEST**

9 on the interested parties to this action in the manner described below and addressed as follows:

10 *****PLEASE SEE ATTACHED SERVICE LIST*****

11 ☒ (BY E-MAIL) On this date, I personally transmitted the foregoing document(s) via
12 electronic mail to the e-mail address(es) of the person(s) on the attached service list
13 before 5:00 p.m., Pacific Standard Time.

14 ☒ (BY MAIL) I am readily familiar with my employer's business practice for collection
15 and processing of correspondence for mailing with the U.S. Postal Service, and that
16 practice is that correspondence is deposited with the U.S. Postal Service the same day
17 as the day of collection in the ordinary course of business. On this date, I placed the
18 document(s) in envelopes for collection and mailing following ordinary business
19 practices.

20 I declare under penalty of perjury under the laws of the State of California that the
21 foregoing is true and correct.

22 Executed on **December 7, 2018**, at Los Angeles, California.

23
24 Ashley Langill
25 Declarant

26 
27 Signature

SERVICE LIST

**In the Matter of the Protest of MAVERICK AUTO GROUP 2, LLC v. VOLKSWAGEN
GROUP OF AMERICA, INC.**

Protest No.:

New Motor Vehicle Board 1507 – 21st Street, Suite 330 Sacramento, CA 905814 Email: nmvb@nmvb.ca.gov	Via Electronic Mail Only
VOLKSWAGEN GROUP OF AMERICA, INC. c/o Corporation Service Company Which Will Do Business in California as CSC – Lawyers Incorporating Service 2710 Gateway Oaks Drive, Suite 150N Sacramento, CA 95833	Via Postal Mail Only
VOLKSWAGEN GROUP OF AMERICA, INC. Attn: Sal Mazzara 21700 Oxnard Street, Suite 1900 Woodland Hills, CA 91367	Via Postal Mail Only